

CHAPTER 5

ARTICLE 54, INVESTIGATION OF GASSING INCIDENTS

Effective June 23, 2005

54110.1 POLICY

The Department shall implement and maintain a protocol for the investigation of gassing incidents in order to establish the elements of PC 4501.1(b) and successfully prosecute crimes under this statute.

54110.2 PURPOSE

This article delineates the roles and responsibilities of staff involved in the investigation of gassing incidents.

54110.3 DEFINITION OF GASSING

Gassing, as defined by PC 4501.1(b), means “..intentionally placing or throwing, or causing to be placed or thrown, upon the person of another, any human excrement or other bodily fluids or bodily substances or any mixture containing human excrement or other bodily fluids or bodily substances that result in actual contact with the person’s skin or membranes.”

Pursuant to Penal Code Section 4501.1(a), a “..person confined in state prison who commits a battery by gassing upon the person of any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of part 2, or employee of the state prison is guilty of aggravated battery.”

Hereinafter inmate/parolee will be referred to as inmate, unless specifically identified otherwise by references to the PC.

54110.4 INITIAL RESPONSE

As soon as possible, the victim should attempt to determine if the substance was a gassing substance such as urine, feces, sputum, blood, semen, etc. This determination is accomplished by the victim noting the odor, color, and texture of the substance, and any chemical reactions, etc. The victim does not have to examine the substance that was thrown on them. Rather, as soon as practical, the victim should either relay their impression of what the substance was to the officers assigned to investigate the gassing or include it in their report.

The victim’s clothing that is contaminated by the gassing substance is evidence. As soon as practical, the clothing should be relinquished by the victim, replaced with an available garment, and any stains that appear to be from the gassing substance should be outlined with a black permanent ink marker to assist laboratory personnel to locate the site on the clothing. The stains should also be photographed while they are still wet. Caution should be taken to ensure that separate stains on the clothing articles do not touch each other. Staff are advised to practice universal precautions and wear proper protective clothing when handling the clothing, as well as, to maintain the chain of custody of the clothing item.

Every effort should be made to obtain a statement or report from the victim regarding what they observed, including, but not limited to:

- What the suspect stated before, during, and after the gassing.
- The type of container, if any, used by the suspect to commit the gassing.
- The actions of the suspect both before and after the gassing.

Any admissions or inculpatory statements made by the suspect that were overheard by the victim can be critical in achieving a successful prosecution.

Any employee that comes into contact with a human body fluid, as recognized by the Centers for Disease Control and Prevention, will be evaluated by appropriately licensed and trained medical staff. The medical evaluation will take priority over the collection of evidence, report writing, or other nonemergency issues or duties. The requirement to fill out paper work or receive paper work relating to the incident will not delay the employee from seeking offsite medical care.

The inmate suspect(s) should be removed from their cell or area where the attack occurred and searched for evidence. Any clothing items worn by the suspect(s) that appear to be stained with the same substance as thrown on the victim should be marked, photographed, and collected in the same manner as the victim’s clothing. The suspect(s) should be placed in a secure holding cell and a crime scene search should be initiated. If there is more than one suspect, they should be separated immediately.

54110.5 HANDLING OF EVIDENCE

Any clothing item contaminated with body fluids should be dried and then stored in clean paper bags. Transport or shipment of the evidence items to the laboratory conducting the testing should be expedited.

When collecting articles of clothing as evidence, each article is to be placed into a separate paper bag. Protective gloves should be changed each time a separate article of clothing is handled to prevent cross contamination of evidence items. Each evidence bag must be properly identified with the date, time, case number, charge, suspect name and CDC number, and victim name. Each evidence item can be marked with the finder’s initials and the date the item was obtained.

If there is any information that the substance used in the gassing contains a communicable disease, the laboratory personnel who are testing the substance should be made aware of this information. This information will help to ensure the safety of the laboratory personnel testing the substance and will also help in isolating and identifying the suspect.

Evidence should be submitted to the appropriate California Department of Justice, Bureau of Forensic Services, laboratory that other evidence is submitted to as per each institution/facilities Investigative Services Unit (ISU).

54110.6 CRIME SCENE INVESTIGATION

The staff investigating a crime scene where a gassing has occurred should ensure they are wearing proper protective equipment such as gloves. The outer door of the cell or the general area where the gassing occurred should be photographed. Any areas on the door, door opening, or general area that appear to be contaminated with the same substance that was thrown on the victim should also be photographed. If the crime scene is a cell, the door of the cell should be opened and photographed as discovered. A search for any container used by the suspect to commit the gassing should be initiated, and if discovered, should be photographed in place and collected and processed as evidence.

Investigating staff should look for traces of the gassing substance on the floor, walls, or any other surface where the substance may be located to be photographed and for the purpose of collecting samples. When collecting samples, staff should use sterile swabs, and should also take a "control" swab of an apparent uncontaminated area adjacent to the area contaminated by the gassing substance prior to taking a swab of the suspected gassing substance. The control swab and the contaminated swab should also be processed as evidence. All evidence must follow an appropriate chain of custody and be retained in an evidence locker maintained by the ISU for possible future criminal prosecution.

54110.7 EMPLOYEE CONSIDERATIONS

In the event of a possible exposure to body fluids, the CDC Exposure Control Plan and any local institutional procedures regarding the exposure to human body fluids or blood should be followed. The health and welfare of the victim must be given priority. The medical evaluation of the employee should take precedence over collection of evidence, report writing, or other non-emergency issues or duties. The employee Post Trauma Program should be offered to the victim along with referrals to the Employee Assistance Program, as needed.

The employee's supervisor will be responsible for filling out and/or collecting the following documents:

- State Compensation Insurance Fund Report of Occupational Injury or Illness.
- Employees Claim for Workers Compensation Benefits.
- Any local Institutional Report of Job-Related Injury/Illness as required.

PC 4501.1(c) establishes that the Chief Medical Officer (CMO), or their designee, can order an inmate to receive an examination or test for hepatitis and/or tuberculosis on a voluntary or involuntary basis, if there is probable cause to believe the inmate has committed a crime under this section and the test is medically necessary to protect the health of the officer or employee who was the victim of the violation. Following a potential exposure to a bloodborne pathogen, an employee will immediately be told by the Warden, Administrative Officer of the Day, or Watch Commander, if the medical staff have evidence indicating that the inmate has Human Immunodeficiency Virus, or any other communicable disease, such as Hepatitis B or C.

PC 7510-7515 establishes procedures for the requirement that employees report possible exposure to body fluids from inmates or parolees; employees may request that the inmate or parolee be tested for the HIV virus. This request should be made in writing, in the form of a report of exposure, and submitted to the CMO within two days after the incident. The CMO may waive this filing period requirement if it is determined that good cause exists.

If an employee's garment has been contaminated with a potential bloodborne pathogen and not retained for criminal prosecution, the employee will be provided an alternate garment to wear and afforded an opportunity to shower. Additionally, the contaminated garment will be cleaned at Department expense and returned to the employee within 30 calendar days of the incident. If a garment has been contaminated with a potential bloodborne pathogen, and retained as evidence for criminal prosecution, the employee will be reimbursed by the institution for the cost of the garment within 60 calendar days of the incident. CDC Form 892, Employee Claim for Loss or Damage of Personal Property, should be used by the employee for reimbursement.

54110.8 SUSPECT INTERVIEWS

The suspect(s) is to be interviewed with a tape recording made of the interview. As the interview constitutes a custodial interrogation, the suspect(s) must be advised of their Miranda Rights before questioning. If there is more than one suspect, they are to be interviewed separately. During the interview an attempt should be made to establish the elements of the crime, including, but not limited to, the type of substance thrown, how the suspect(s) obtained the substance, how the substance was delivered to the victim, how the suspect(s) planned and carried out the gassing, and motive for the gassing. The investigator should make every effort to obtain an admission, or as much information as possible, from the suspect(s) in order to establish culpability.

54110.9 FILING CONSIDERATIONS

The penalty for violation of PC 4501.1 is imprisonment in the county jail, or imprisonment in the state prison system for up to 4 years. Further, inmates who commit gassings can also be charged under the provisions of PC 4501.5, Battery by Prisoner on Non-confined Person, with a penalty of up to 4 years in the state prison system to be served consecutively. Each institution/facilities ISU should confer with their local District Attorney's Office to determine the most appropriate statute to charge an inmate who has committed this crime.

54110.10 REVISIONS

The Assistant Deputy Director, Office of Environmental Health and Safety, or designee shall be responsible for ensuring that the contents of this article are kept current and accurate.

54110.11 REFERENCES

PC §§ 4501.1, 4501.5

PC §§ 7510-7515

Ch. 4.5 of Title 3